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SUPREME COURT  
STATE OF WASHINGTON

2009 MAR -6 A 10: 21

BY RONALD R. CARPENTER

No. 82551-3

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SUPREME COURT OF THE STATE OF WASHINGTON

SEIU HEALTHCARE 775NW

Petitioner,

v.

GOVERNOR CHRISTINE  
GREGOIRE,

Respondent.

PETITIONER'S OPPOSITION  
TO MOTION TO STRIKE  
PETITIONERS' STATEMENT  
OF ADDITIONAL  
AUTHORITY

**I. INTRODUCTION**

Petitioner submits this response to Respondent's Motion to Strike Petitioner's Statement of Additional Authority.

On February 27, 2009, Petitioner submitted its Statement of Additional Authority pursuant to RAP 10.8. It consisted of a February 26, 2009, decision by a Public Employment Relations Commission (PERC) hearing examiner, *Washington State Patrol Trooper Association v. State – Office of the Governor*, Decision No. 10313 (PECB, 2009).

Respondent maintains that because, under WAC 391-45-350, the hearing examiner's order will only become the final order of PERC if it is not appealed to PERC within twenty days of February 27, 2009, a time

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period which has not yet expired, the Court should not consider the examiner's decision and should strike it from the record.

However, RAP 10.8 encompasses both persuasive and controlling authority. Moreover, even a final decision by the PERC Commission would still have only persuasive value to this Court. Thus, there is no basis in law for this Court to grant the Respondent's motion to strike the proffered additional authority.

## **II. GROUNDS FOR DENYING MOTION**

Respondent offers no legal authority in support of the proposition that only a decision by an agency's highest adjudicative authority may be considered by this Court in a Statement of Additional Authority filed pursuant to RAP 10.8. No language in RAP 10.8 compels or suggests such a conclusion. Moreover, such an interpretation of the proper scope of additional authority which can appropriately be submitted pursuant to RAP 10.8 draws a distinction between two types of nonbinding, potentially persuasive authority, a distinction for which no persuasive argument can be made.

What Respondent apparently fails to realize is that no agency order, whether provisional or final, binds this or any other court. *See Verizon Northwest, Inc. v. Washington Employment Sec. Dept.* 164 Wn.2d 909, 915, 194 P.3d 255, 259 - 260 (2008). While administrative decisions

are subject to judicial review and may potentially become controlling authority if subsequently adopted by a court of appropriate jurisdiction, absent such an adoption, that decision is a value to a court only to the extent that the court finds its reasoning persuasive.

For this reason, the status of any potential appeal by Respondent of the PERC examiner decision adverse to it is entirely irrelevant to Petitioner's request that this Court take notice of the hearing officer's ruling. That request is predicated exclusively on the belief that this Court will find the hearing officer's analysis of the statute before him, a statute strikingly similar to that at issue in the instant case, compelling. Therefore, whether State is in the process of preparing an appeal is immaterial.

RAP 10.8 certainly encompasses the citation to this Court of authority, such as the February 26, 2009, decision here at issue, which is being presented solely for its persuasive value. Indeed, the Respondent can hardly dispute that assertion, given that its own Statement of Additional Authority, filed on February 26, 2009, consisted of a 1973 decision from the state of Wisconsin. While Respondent may advocate for the persuasive value of the Wisconsin court's decision, it certainly is not controlling. Yet no one, least of all Respondent, could suggest that citation to this authority was for this reason inappropriate.

In short, there is no basis to exclude Petitioners' Statement of Additional Authority. Respondent's motion should therefore be denied.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of March 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of March, 2009, I caused Petitioner's Opposition to Motion to Strike Petitioners' Statement of Additional Authority to be filed with the Washington State Supreme Court via email to Supreme@courts.wa.gov. Per agreement of counsel I caused the same to be served via email and same day US First Class Mail to the following:

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